

PERMS

75-3692

OGC 75-3838

OGC Has Reviewed

7 November 1975

MEMORANDUM FOR: Freedom of Information and Privacy Acts Officers

SUBJECT : Definition of Records to be Considered as Pertaining to Individuals Under Privacy Act Requests

1. Requests for all information should require consideration of that information which evidences Central Intelligence Agency interest in requester.

2. Much information discovered during searches is not in fact information about individuals as contemplated by the Privacy Act, but rather is an incidental reference to the subject requester which is contained in a record pertaining to another subject and should not be considered a document responsive to the request.

3. The comprehensive Central Intelligence Agency cross-index systems appear to account for these incidental references appearing during record searches. However, it should be stressed that references turned up as a result of such searches are not invariably to be considered information pertaining to the individual.

4. Examples of incidental references not to be considered as information coming under the purview of the Freedom of Information Act are as follows:

- a. A report that A met B in front of a theatre playing a movie starring actress C. The fact that C's name is cross-indexed in a manner that makes it retrievable does not mean that this bit of information "pertains" to that individual as defined by the Privacy Act.
- b. An index card which contains the name of an individual but does not contain any substantive data other than file references is not to be considered information "pertaining" to an individual under the Privacy Act.

SUBJECT: Definition of Records to be Considered as Pertaining to Individuals
Under Privacy Act Requests

Distribution:

- 1 - Assistant to the Director
- 1 - Administrative Officer
- 1 - General Counsel
- 1 - Legislative Counsel
- 1 - Inspector General
- 1 - Chief, Management Staff
- 1 - Coordinator for Academic Relations
- 1 - Chief, Collection Guidance and Assessments Staff
- 1 - Director, Central Reference Service
- 1 - Director, Geographic and Cartographic Research
- 1 - Director of Economic Research
- 1 - Career Management Officer
- 1 - Chief, Information and Privacy Staff
- 1 - Director of Communications
- 1 - Director of Finance
- 1 - Director of Joint Computer Support
- 1 - Director of Logistics
- 1 - Director of Medical Services
- ✓ 1 - Director of Personnel
- 1 - Director of Security
- 1 - Director of Training
- 1 - Chief, Personnel Officer, DDS&T
- 1 - Director of Technical Service
- 1 - Chief, Services Staff
- 1 - FIO/DDI
- 1 - FIO/DDS&T
- 1 - FIO/DDO
- 1 - AI/DDA

D/Pers Dist:

- 1 - OP Privacy Officer
- 1 - DD/Pers/P&C
- 1 - DD/Pers/R&P
- 1 - DD/Pers/SP
- 1 - C/SAS
- 1 - Policy File

TRANSMITTAL SLIP		DATE: <i>NOV 1975</i>
TO: DD/Pers/SP		
ROOM NO.	BUILDING	
REMARKS: <i>Gail</i> <i>Capitol Hill</i> <i>1-100</i> <i>1-100</i> <i>O.K. - sent 11/24/75</i>		
FROM:		
<i>Exec Asst to D/Pers</i>		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

5 November 1975

MEMORANDUM FOR: Privacy Act Systems Managers

SUBJECT : Guidance on the Privacy Act

1. Drawing on our FOIA experience, we recognize the need for processing requests submitted under the Privacy Act. In the early going, we anticipate that a number of problems may surface that could have a bearing on several offices. We are, therefore, initiating a procedure to disseminate advisory papers, legal interpretations of the Act's provisions prepared by the Office of General Counsel, and information concerning decisions taken by the Information Review Committee that focus on the Privacy Act. In addition, as the situation warrants, we plan to use this procedure to provide timely guidance on the Freedom of Information Act.

2. Attached is the first of these papers which compiles exemptions authorized by the Director under the Privacy Act to protect information from unauthorized disclosure. This information is covered in the Agency rules published in the Federal Register on 28 August 1975 and in the Headquarters Notice [REDACTED] dated 26 September 1975. The exemptions listed in the attachment cite the specific provisions of the Act to assist offices in their review of records requested pursuant to the Privacy Act.

STATINTL

STATIN

[REDACTED]
John P. Blake
for Deputy Director
for
Administration

Attachment: a/s

SUBJECT: Guidance on the Privacy Act

Addressee Distribution:

Assistant to the Director
Administrative Officer
General Counsel
Legislative Counsel
Inspector General
Chief, Management Staff
Coordinator for Academic Relations
Chief, Collection Guidance and Assessments Staff
Director, Central Reference Service
Director, Geographic and Cartographic Research
Director of Economic Research
Career Management Officer
Chief, Information and Privacy Staff
Director of Communications
Director of Finance
Director of Joint Computer Support
Director of Logistics
Director of Medical Services
Director of Personnel
Director of Security
Director of Training
Chief, Personnel Officer
Director of Technical Service
Chief, Services Staff

PRIVACY ACT GUIDANCE MEMORANDUM NO. 1

SUBJECT: CIA Privacy Act Exemptions

The Privacy Act of 1974 provides two types of exemptions that may be exercised by the Head of an agency to protect information from unauthorized disclosure. Under subsection (j)(1) the Director of Central Intelligence is authorized to exempt any system of records from certain provisions of the Act and, under subsection (k) the head of agency may exempt certain types of material from access and other provisions of the Act. This paper addresses the exemption authority exercised by the Director only as it applies to the exemption of information from the access and notification requirements under the Act.

a. Subsection (j)(1)

(1) Information and material exempt from access:

- (a) Polygraph records.
- (b) Documents or segregable portions of documents in any system of records that consist of, pertain to, or would otherwise reveal intelligence sources and methods.
- (c) Documents or information provided by foreign, Federal, state or other public agencies or authorities. In those cases in which a record search reveals documents originated from another Federal agency, the document reference numbers, dates and other document identifiers are to be referred to the Information and Privacy Staff (IPS) for forwarding to the originating agency. IPS will notify the requester in its response that material from another agency was identified and referred to that agency unless the originating agency advises IPS within a stipulated period of time not to notify the requester of the existence of that agency's document(s).
- (d) Disclosure accounting records required by the Privacy Act that reveal the dissemination of information outside of CIA.

(2) Information and material exempt from notification:

When a determination is made by a System Manager in coordination with the Chief, IPS, that confirmation of the existence of a record would jeopardize intelligence sources and methods, the requester will be advised that there is no record on him pursuant to the Privacy Act.

b. Subsection (k)

Information and material exempt from access:

-- (k)(1) Properly classified in accordance with Executive Order 11652.

-- (k)(2) Investigatory material compiled for law enforcement purposes by agencies whose principal function falls outside the enforcement of criminal laws. An example of material in this category are records compiled in the course of an investigation of an alleged or suspected violation of civil laws, including violations of agency regulations. If an individual is denied any right, privilege, or benefit that he would otherwise be eligible for as a result of the maintenance of this material, he will be provided such material, except to the extent that disclosure of the material would reveal the identity of a source who provided the information to the Government under an express (or, prior to 27 September 1975, implied) promise that the identity of the source would be held in confidence.

-- (k)(3) Maintained in connection with providing protective services to the President of the United States or other individuals under law.

-- (k)(4) Required by statute to be maintained and used solely for statistical purposes.

-- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express (or, prior to 27 September 1975, implied) promise that the identity of the source would be held in confidence.

-- (k)(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, but only if disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

-- (k)(7) Evaluation material used to determine potential for promotion in the armed services.

STATINTL

for
John F. Blake
Deputy Director
for
Administration

TRANSMITTAL SLIP		DATE <u>1 NOV 1975</u>	
TO: DD/Pers/SP			
ROOM NO.	BUILDING		
REMARKS: <i>See Recd make copies for Rm. ha Done 12 Nov 75</i>			
FROM: <i>Spec Asst to D/Pers</i>			
ROOM NO.	BUILDING	EXTENSION	

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

DATE: 3 OCT 1978 Approved Release 2002/01/30 : CIA-RDP84-00688R000200310009-2
REPLY TO:
ATTN OF: ISD

SUBJECT: Guidance on responding to congressional inquiries involving disclosure of personal information

- Agency Privacy Act Liaisons

The attached memorandum to agency heads supersedes the draft guidance provided to you earlier this week.

Walter W. Haase
Walter W. Haase
Deputy Associate Director
for Information Systems

Attachment



OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 3 1975

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Congressional inquiries which entail access to personal information subject to the Privacy Act

This memorandum provides additional guidance to Executive Departments and Agencies on responding to congressional inquiries which involve access to personal information subject to the Privacy Act of 1974 (5 U.S.C. 552a). This guidance has been coordinated with the congressional committees with legislative jurisdiction and the principal agencies affected. It is intended to assure that implementation of the Act does not have the unintended effect of denying individuals the benefit of congressional assistance which they request.

It is recommended that each agency establish the following as a routine use for all of its systems, consistent with subsections (a) (7) and (e) (11) of the Act:

"Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

The operation of this routine use will obviate the need for the written consent of the constituent in every case where the constituent requests assistance of the Member which would entail a disclosure of information pertaining to the constituent.

In those cases where the congressional inquiry indicates that the request is being made on behalf of a person other than the individual whose record is to be disclosed, the agency should advise the congressional office that the written consent of the subject of the record is required. The agency should not contact the subject unless the congressional office requests it to do so.

In addition to the routine use, agencies can, of course, respond to many congressional requests for assistance on behalf of individuals without disclosing personal information which would fall within the Privacy Act, e.g., a

congressional inquiry concerning a missing Social Security check can be answered by the agency by stating the reason for the delay.

Personal information can be disclosed in response to a congressional inquiry without written consent or operation of a routine use-

-- if the information would be required to be disclosed under the Freedom of Information Act (Subsection (b)(2));

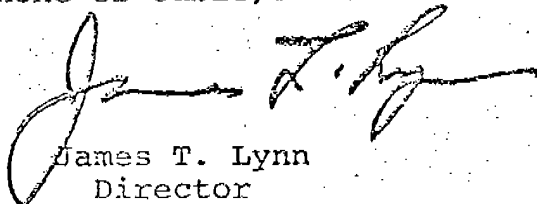
-- if the Member requests that the response go directly to the individual to whom the record pertains;

-- in "compelling circumstances affecting the health or safety of an individual..." (Subsection (b)(8)); or

-- to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof..." (Subsection (b)(9)).

The routine use recommended above and disclosures thereunder are, of course, subject to the 30 day prior notice requirement of the Act (Subsection (e)(11)). In the interim, however, it should be possible to respond to most inquiries by using the provisions cited in the previous paragraph. Furthermore, when the congressional inquiry indicates that the request is being made on the basis of a written request from the individual to whom the record pertains, consent can be inferred even if the constituent letter is not provided to the agency.

It is urged that all agency personnel who are involved in responding to congressional inquiries (including all field offices) be advised of this policy by the most expeditious means available (e.g., telephone or cable).


James T. Lynn
Director

TRANSMITTAL SLIP		DATE 8 October 1975
TO: Director of Personnel		
ROOM NO. 5E56	BUILDING Hqs	
REMARKS: Please make appropriate distribution within your Office of the attached OMB notice on reporting requirements under the Privacy Act. We will issue an internal memorandum on this subject in the near future that will provide guidance on in-house procedures re the preparation of new record system notices and modifications to existing record systems.		
Att		
FROM: Office of DD/A		
ROOM NO. 2E42	BUILDING Hqs	EXTENSION 6027

FORM NO 241
1 FEB 55REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

DATE October 2, 1975

REPLY TO
ATTN OF: ISD

SUBJECT: OMB Circular No. A-108 Transmittal Memorandum No. 1

Agency Liaison Representatives for Privacy Act Implementation

Attached for your information is an advance copy of Transmittal Memorandum No. 1 to OMB Circular No. A-108 which establishes the new system reporting requirements pursuant to Section 552a(o) of the Privacy Act.

This Transmittal Memo will be published in the Federal Register within the next few days.

Walter W. Haase

Walter W. Haase
Deputy Associate Director
for Information Systems

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 30, 1975

CIRCULAR NO. A-108
Transmittal Memorandum No. 1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Responsibilities for the maintenance of records
about individuals by Federal agencies

1. Purpose. This supplement to OMB Circular A-108 dated July 1, 1975 provides guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act of 1974 (P.L. 93-579, 5 U.S.C. 552a(o)). These procedures supersede preliminary guidance on preparing the Report on New Systems contained in the OMB Privacy Act Guidelines dated July 1, 1975 (Federal Register, July 9, 1975, p. 28977).

2. Reporting requirements.

a. A Report on New Systems must be submitted when:

(1) A new system of personal records subject to the Privacy Act is proposed. A new system of records subject to the new system reporting requirement is one for which no public notice consistent with the provisions of subsection (e)(4) is currently published in the Federal Register.

If a public notice for any specific system of records is withdrawn, suspended, cancelled, or terminated and subsequently reinstated, the subject system of records shall be considered a new system and subject to the new system reporting requirement at such time that it is reinstated.

(2) A change to a system of personal records subject to the Privacy Act is proposed. A new system report is required for any change to an existing system which meets any of the following criteria.

(No. A-108)

(a) Increase or change the number or types of individuals on whom records are maintained. Changes involving the number (rather than the types) of individuals about whom records are kept need only be reported when that change significantly alters the character and purpose of the system of records, e.g., normal increases in historical files or other increases in the number of records in a file which can be attributed to normal growth patterns need not be reported. A change resulting from a change in the scope of the population covered; e.g., a system which only covered a portion of the work force is expanded to cover all, is required to be reported.

(b) Expand the type or categories of information maintained. For example, if an employee payroll file is expanded to include data on education and training, this would be considered an expansion of the "type or categories of information" maintained, and would have to be reported.

(c) Alter the manner in which the records are organized or the manner in which the records are indexed or retrieved so as to change the nature or scope of those records. For example, the combining of two or more existing systems or splitting an existing system into two or more different systems such as might occur in a centralization or decentralization of organizational responsibilities would require a report.

(d) Alter the purposes for which the information is used. For example, a proposal that files currently used as historical military service records are to be used for making determinations on eligibility for disability benefits would require a report. A proposal to establish or change the "routine uses" of the system will not require the submission of a Report on New System if such use is compatible with the purposes for which the system is maintained; i.e., does not, in effect, create a new purpose. Any new or changed "routine use" would, however, be subject to the requirements to give 30 days prior notice of such change in the Federal Register (5 U.S.C. 552a(e)(11)).

(e) Change the equipment configuration (i.e., hardware and/or software) on which the system is operated so as to create the potential for either greater or easier access. For example, the addition of a telecommunications

(No. A-108)

capability which could increase the risk of unauthorized access would require a report.

b. Content of the Report. The agency report on proposed new systems, or proposal to modify existing systems shall consist of a brief narrative description, supporting documentation and an update of the inventory of Federal personal data systems as outlined below:

(1) Narrative Statement - A brief statement, normally not to exceed four pages in length, which:

-- describes the purposes of the system of records.

-- identifies the authority under which the system of records is to be maintained.

-- provides the agency's evaluation of "the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals and its effect on the preservation of the constitutional principle of federalism and separation of power," and

-- provides a brief description of steps taken by the agency to minimize the risk of unauthorized access to the system of records including a discussion of higher or lower risk alternatives which were considered for meeting the requirements of the system. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be available on request.

The narrative statement should make reference, as appropriate, to information in the supporting documentation rather than restate such information.

Where changes to computer installations, communications networks, or any other general changes in information collection, handling, storage or dissemination are made which affect multiple systems of records; a single consolidated new system report may be submitted. In such cases, the narrative statement should address the overall privacy implications of the proposed change, identify all systems of records affected by the change and briefly describe any unique impacts on any specific system of

(No. A-108)

records. Supporting documentation, as defined in the subsequent paragraphs, shall be provided for each system of records.

(2) Supporting Documentation - The following shall be appended to all new system reports:

(a) An advance copy of the new or revised system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) which the agency proposes to publish for the new or altered system(s). For proposed alterations of existing systems the documentation should be provided in the same form as the agency proposes to publish the public notice of such changes. If the agency proposes to publish changes in the form of a revision to the public notice, a copy of the proposed notices of revision should be provided. If the agency plans to supersede the entire existing notice, changes from the currently published notice shall be highlighted by underlining all new or revised portions.

(b) An advance copy of any new rules or changes to published rules (consistent with the provisions of 5 U.S.C. 552a(e)(1) and (f)) which the agency proposes to issue for the new or altered system. If no change to existing rules are required for the proposed new or altered system, the report shall so state. Proposed changes to existing rules shall be provided in a manner similar to that described for the system notices.

(c) An advance copy of any proposed rules setting forth the reasons why the system is to be exempted from any specific provision, (consistent with the provisions of 5 U.S.C. 552a(j) or (k)) if the agency head plans to invoke any exemptions for the new or altered systems.

(3) Update of Federal Inventory of Personal Data Systems - OMB in cooperation with the National Archives and Records Service is developing a perpetual inventory of all systems of records subject to the Act. The detailed plans for this inventory are still being developed. It is anticipated, however, that agencies will be requested to provide a simple report to facilitate maintenance of the Federal inventory. This portion of the report on new systems is not in effect until such time as further instructions are issued.

(No. A-108)

c. Report Format.

(1) Narrative Statement. No standard format has been established for the narrative statement. Agencies should present the information requested in the most concise fashion possible.

(2) Supporting Documentation. The format of the documentation shall, where applicable, be consistent with the publication requirements established by the Office of the Federal Register of the General Services Administration.

(3) Update of Federal Inventory of Personal Data Systems. Format being developed.

d. Distribution of Report. Two copies of each new systems report shall be submitted to each of the following:

(1) Speaker of the House.

(2) President of the Senate.

(3) The Privacy Protection Study Commission during the period of its existence as set forth in Section 5(g) of the Privacy Act.

(4) Office of Management and Budget.

e. Timing. A report on a proposed new or altered system of records shall be submitted no later than the following dates, whichever is earlier:

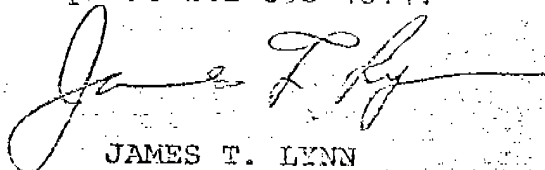
(1) Sixty (60) days before any issuance of data collection forms and/or instructions; or

(2) Sixty (60) days before any public issuance of a Request for Proposal or an Invitation to Bid for computer and/or communications systems or services intended to support the system of records.

3. Effective Date. The provisions of this Transmittal Memorandum are effective upon issuance.

(No. A-108)

4. Inquiries. Inquiries concerning this Transmittal Memorandum may be addressed to the Information Systems Division, Office of Management and Budget, Room 9002, NEOB, Washington, D.C. 20503, telephone 202 395-4314.



JAMES T. LYNN
DIRECTOR

(No. A-109)

TRANSMITTAL SLIP		DATE	10 OCT 1975
TO: DD/Pers/SP <i>AM</i>			
ROOM NO.	BUILDING		
REMARKS <i>See Please send copies to Pers. Done 10/17/75</i>			
FROM:			
ROOM NO.	BUILDING	EXTENSION	

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)